



DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 502, 556, and 558

RIN 3141-AA32

Definitions; Background Investigation for Primary Management Officials and Key Employees; Gaming Licenses for Primary Management Officials and Key Employees

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Final rule.

SUMMARY: In April 2023, the Commission issued a revised proposed rule refining proposed changes to the “primary management official” and “key employee” definitions as well as the newly proposed definitions for “Gaming Enterprise” and “Tribal Gaming Regulatory Authority” (TGRA). The revised proposal, like the 2022 original, also proposed: modernizing retention requirements for background investigations and licensing applications; vesting revocation hearing rights upon license issuance as well as in accordance with tribal law, regulation, or policy; and augmenting revocation decision notification and submission requirements. After closely considering comments received, this final rule permits tribes to designate other gaming enterprise employees as key employees and other employed gaming enterprise management officials as primary management officials, including TGRA personnel. These optional designations occur by any documentary means. Further, the key employee definition no longer sets forth a wage threshold but includes in the definition a gaming operation’s four most highly compensated persons. And the terms “independent” and “governmental” have been struck from the TGRA definition, aligning it with a corresponding definition in NIGC

regulations, part 547. Lastly, license revocation decisions only require notifying the Commission of the revocation along with a copy of the revocation decision.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jo-Ann Shyloski, National Indian Gaming Commission, 1849 C Street NW, MS 161, Washington, DC 20240. Telephone: (202) 632-7003. Email: Jo-Ann.Shyloski@nigc.gov. Fax: (202) 632-7066.

SUPPLEMENTARY INFORMATION:

I. Background and Development of the Rule

A. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100-497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (“NIGC” or “Commission”) and set out a comprehensive framework for the regulation of gaming on Indian lands. IGRA requires that tribal gaming ordinances provide a system for: background investigations of “primary management officials and key employees of the gaming enterprise;” tribal licenses for them; a suitability standard to assess whether they pose a threat to gaming and are not eligible for employment; and notices of background check results to the Commission before the issuance of licenses.

The Commission first defined “key employee” and “primary management official” in April of 1992, early in its existence. As mandated by IGRA, applicants for key employee and primary management official positions are subject to a background investigation as a condition of licensure. In 2009, the Commission expanded these definitions to permit tribes to designate other persons as key employees or primary management officials (74 FR 36926). The FBI, U.S. Department of Justice, took issue with this expansion, denying the processing of CHRI for the expanded positions’

background investigations. This final rule rectifies this issue in part 502, as it now limits tribal designations to “[a]ny other employee of the gaming enterprise as documented by the tribe as a key employee” and “[a]ny other employed management official of the gaming enterprise documented by the tribe as a primary management official.”

Background investigation and licensing regulations for key employees and primary management officials were initially issued by the Commission in January 1993 (58 FR 5802-01) in parts 556 and 558, respectively. The Commission updated these regulations in 2013 to streamline the submission of documents; to ensure that two notifications are submitted to the Commission in compliance with IGRA; and to clarify the regulations regarding the issuance of temporary and permanent gaming licenses (78 FR 5276-01). This final rule modernizes retention requirements for background investigations and licensing applications; vests revocation hearing rights upon license issuance as well as in accordance with tribal law, regulation, or policy; and augments revocation decision notification and submission requirements. The rule also revises the “primary management official” and “key employee” definitions and creates new definitions for “Gaming Enterprise” and “Tribal Gaming Regulatory Authority” (TGRA). Importantly, the rule allows tribes to designate other gaming enterprise employees as key employees and other employed gaming enterprise management officials as primary management officials, including TGRA personnel.

B. Development of the Rule

On, June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on numerous topics, including proposed changes to the key employee and primary management definitions and the backgrounding and licensing regulations. Prior to consultation, the Commission released proposed discussion drafts of the regulations for review. The proposed amendments to these regulations were intended to: address the FBI’s concerns regarding

the key employee and primary management official definitions; include gaming operation employees with unescorted access to secured areas as key employees; combine certain subsections of the key employee definition; add general managers and similar positions to the primary management official definition; and update licensing application retention requirements. The Commission held two virtual consultation sessions in July of 2021 to receive tribal input on the possible changes.

The Commission reviewed all comments received as part of the consultation process and addressed them in the initial proposed rule, issued on August 10, 2022. Again, the Commission thoroughly reviewed comments from the initial proposed rule, modified its proposal considering them, and issued a revised proposed rule on April 14, 2023.

II. Review of Public Comments

The Commission received the following comments in response to our Revised Notice of Proposed Rulemaking.

Comment: Four commenters support the Commission’s removal of the wage threshold in the key employee definition, because such threshold: 1) is not tied to an employee’s duties and responsibilities, 2) does not enhance safeguarding gaming, 3) is overly broad, and 4) creates an unnecessary administrative burden, including needless time and expense of licensing employees who may not perform gaming related functions. Two commenters disagree with the removal, as it provides authority to background a greater number of employees whose responsibilities are reflected in their compensation.

Response: Given the difference of opinion between tribes, the Commission agrees that the wage threshold of \$50,000 per year for a key employee is not duty, function, or responsibility related, which may result in overly broad and unnecessary licensures. Nonetheless, the Commission retained “the four most highly compensated persons” by

the gaming operation in the definition if such persons are not otherwise licensed as a key employee or a primary management official.

Comment: One commenter welcomes the clarification in 25 CFR 502.14(a), the key employee definition, that the functions outlined apply only to people who undertake them on behalf of the gaming operation.

Response: The Commission appreciates the comment.

Comment: A commenter agrees with including in the key employee definition: “any gaming operation employee authorized by the gaming operation for unescorted access to secured gaming areas designated as secured gaming areas by the TGRA.”

Response: The Commission appreciates the comment.

Comment: One commenter expressed concern regarding the change in the key employee definition from “the four most highly compensated persons in the gaming operation” to “the four persons most highly compensated *by* the gaming operation.” The commenter believes that such change may capture individuals who are paid by the gaming facility but do not work for the facility or serve a gaming related function.

Response: The Commission intends that “the four persons most highly compensated *by* the gaming operation” include gaming operation employees. And, certainly, it would be a rare instance for these individuals not to work for the facility or serve a gaming related function.

Comment: Two commenters support the inclusion of “any other employee of the gaming enterprise as documented by the tribe as a key employee” in the key employee definition as it enhances risk management, allowing the addition of other enterprise employees when documented.

Response: The Commission appreciates the comments.

Comment: One commenter objects to adding custodian of surveillance systems or surveillance system records to the key employee definition, because surveillance is a

tribal regulatory function and including it within the definition contradicts the regulatory body's independence.

Response: The commenter's concerns have no basis since the key employee definition limits custodians of surveillance systems or surveillance system records to only those persons who perform these functions for the gaming operation, not a tribal regulatory body.

Comment: One commenter suggests revising section (a) of the primary management definition, 25 CFR 502.19 — changing “any person having management responsibility for a management contract” to “any person having management responsibility pursuant to a management contract.”

Response: This is the first time this recommendation was made. It was not contained in the Commission's original proposal nor raised by the commenter after the initial 2021 consultation proposal, 2021 consultations, or the original 2022 proposed rule.

Consequently, other parties in the regulated community have not had an opportunity to comment on the recommendation. For these reasons, the Commission rejects the recommendation.

Comment: Two commenters expressed concern that 25 CFR 502.19(b) of the primary management official definition — “[a]ny person who has authority: (1)[t]o hire and fire employees of the gaming operation; or (2) [t]o establish policy for the gaming operation” — includes TGRA personnel.

Response: Under NIGC definitions, TGRAs and their personnel come within the definition of “Gaming Enterprise,” not “Gaming Operation.” “Gaming Enterprise” encompasses the entity through which a tribe regulates gaming, whereas “gaming operation” is limited to “each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses.” Therefore, 25

CFR 502.19(b) of the primary management official definition does not include TGRA personnel.

Comment: Another commenter is concerned that one aspect of the primary management official definition, 25 CFR 502.19(b)(1) — “[a]ny person who has authority: (1)[t]o hire and fire employees of the gaming operation” — is based on structure instead of function and mandates licensing any management position that can hire or fire any employee regardless of whether the position has any gaming related responsibility.

Response: The Commission disagrees. Hiring and firing gaming operation employees constitutes a function, duty, or responsibility. And it would be the rare exception rather than the rule for the person with authority to hire and fire gaming operation employees not to have any gaming related responsibility.

Comment: Two commenters appreciate the inclusion in the primary management official definition of “[a]ny other employed management official of the gaming enterprise as documented by the tribe.”

Response: The Commission values these comments.

Comment: One commenter supports the inclusion of the “Gaming Enterprise definition.”

Response: The Commission appreciates the comment.

Comment: Two commenters strongly believe that IGRA only intended licensing requirements pertain to gaming operation employees, not tribal regulators. And the commenter is afraid that “such an arrangement, wherein TGRA employees may be required to hold key employee licenses, would disrupt key tribal governmental structures . . .”

Response: The commenters misunderstand this rule. Under it, TGRA employees are not required to possess key employee licenses. Only if a tribe chooses to document TGRA employees as key employees will they come within the key employee definition.

Comment: A commenter contends that the Gaming Enterprise definition “conflicts with the requirement that a [TGRA] serves out its independent and distinct role separate from the Gaming Enterprise.”

Response: The Commission disagrees. The Gaming Enterprise definition is meant to encompass the entities necessary to conduct, regulate, and secure a tribe’s gaming on Indian lands, including the TGRA. Such definition, however, should not interfere with a TGRA’s independence and distinct role in regulating a tribe’s gaming.

Comment: One commenter asserts that it is unclear how the Gaming Enterprise definition differs from the Gaming Operation definition.

Response: The definitions are distinguishable: “Gaming operation” is defined as “each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses.” Whereas “Gaming Enterprise” “means the entities through which a tribe conducts, regulates, and secures gaming on Indian lands within such tribe’s jurisdiction . . .” So, Gaming Enterprise comprises more than just gaming operations, including TGRAs, Security, and IT entities.

Comment: Two commenters maintain that the “Gaming Enterprise” definition is too broad because of its inclusion of TGRAs and possible inclusion of tribal governmental entities that secure gaming through the approval of contracts.

Response: As stated previously, “Gaming Enterprise” “means the entities through which a tribe conducts, regulates, and secures gaming on Indian lands within such tribe’s jurisdiction pursuant to the Indian Gaming Regulatory Act.” In the definition, the Commission intends to include TGRAs as well as tribal entities that ensure the gaming’s risk from loss or protect the gaming from exposure to danger. The potential inclusion of governmental entities that secure gaming through the approval of contracts was not the Commission’s intent, but their inclusion causes no harm nor creates any obligation on

them, unless a tribe chooses to document certain of their employees as key employees or primary management officials.

Comment: One commenter requested that the “Gaming Enterprise” definition be modified to mean “the business enterprise that operates gaming on Indian lands within a tribe’s jurisdiction pursuant to the Indian Gaming Regulatory Act.”

Response: As an initial matter, the commenter’s proposal is quite like the Commission’s with the exception that the commenter defines Gaming Enterprise as a “business enterprise” that “operates gaming.” The purpose of a definition is to explain a term’s meaning using other terms that are clear and/or commonly known. The Commission’s definition for Gaming Enterprise does just that, whereas, the commenter’s definition uses the same exact terms, defining gaming enterprise as a business enterprise. Further, the Commission intends for the definition to mean more than just the entity that operates gaming, also incorporating the entities that regulate and secure gaming on Indian lands. For these reasons, the Commission rejects the comment.

Comment: Two commenters support the definition of “Tribal Gaming Regulatory Authority (TGRA).”

Response: The Commission appreciates the comments.

Comment: One commenter recommends striking the term “independent” from the TGRA definition since the term is not defined in IGRA or NIGC regulations. Additionally, TGRA is already defined in part 547 of NIGC regulations and does not contain the term “independent.”

Response: The Commission accepts the comment, ensuring that the definitions of TGRA correspond in NIGC regulations parts 502 and 547.

Comment: One commenter generally supports the changes to part 556.

Response: The Commission appreciates the comment.

Comment: One commenter finds that the proposed change to 25 CFR 558.3(c) is helpful since it clarifies the scope of duties that a key employee or primary management official may carry out during the ninety-day period.

Response: The Commission agrees and appreciates the comment.

Comment: One commenter suggests a new change to 25 CFR 558.3(d)(2), which requires tribes to forward a copy of its eligibility determination and notice of results to the Commission when it does not license a key employee or primary management official applicant. The commenter is concerned that this process may capture applicants who are not licensed for reasons other than being found unsuitable and who may not have an eligibility determination. Such circumstance occurs when an applicant withdraws their application before an eligibility determination is completed.

Response: This is the first instance of such a concern being raised. It was not conveyed to the Commission after the initial 2021 consultation proposal, the 2021 consultations, or the original 2022 proposed rule. Consequently, other parties in the regulated community have not had an opportunity to comment on the recommendation. For these reasons, the Commission rejects the recommendation.

Comment: One commenter is generally supportive of the proposed changes to 25 CFR 558.3(e).

Response: The Commission appreciates the comment.

Comment: Two commenters, however, strongly oppose the proposed changes to 25 CFR 558.3(e) — requiring submission of license revocation decisions and summaries of evidence relied upon — as unnecessary and unduly burdensome. The commenters claim that IGRA provides the Commission with a limited role in tribal licensing decisions, allowing it the authority to object to their issuance, and no role in license revocation matters. Further, the commenters believe the Commission already collects information sufficient to achieve the purpose here, including a detailed report on the status of licenses

an applicant holds, formerly held, or has applied for. Additionally, the commenters emphasize that revocation evidence summaries may be extensive (tens or hundreds of pages long) given the extent of evidentiary material, placing temporal and monetary obligations on TGRAs and the Commission that are better used elsewhere.

Response: The Commission disagrees. IGRA requires the Commission to ensure there is an adequate system not only for the background investigations of key employees and primary management officials but also continued oversight of such employees and officials on an ongoing basis. Consequently, these individuals' activities and criminal records require continuous assessment. Notification of license revocations are an essential component of this continuous assessment. Tribal revocations are not contained in other background checks, including FBI CHRI. Such information further safeguards Indian gaming by guaranteeing the Commission is aware of and possesses the most up-to-date licensing information on key employees and primary management officials, which the Commission uses not only for licensing objections but also to assist tribes with their background investigations. As for the submission of license revocation evidence summaries, a summary of evidence is not the same as submission of actual evidence. Nevertheless, given the concerns of an undue burden, the proposal to submit revocation evidence summaries is removed.

Comment: Two commenters welcome the proposed change to 25 CFR 558.4(d), recognizing that a right to a revocation hearing vests not only upon receipt of a license but also at such earlier time as is determined by tribal law, regulation, and/or policy.

Response: The Commission appreciates the comments.

Comment: One commenter suggests a new, additional change to 25 CFR 558.4(e), to ask the Commission to consider flexibility in the 45-day deadline to advise the Commission of a revocation decision.

Response: This is the first time this recommendation was made. It was not proposed by the Commission, nor was it raised by the commenter after the initial 2021 consultation proposal, the 2021 consultations, or the original 2022 proposed rule. Consequently, other parties in the regulated community have not had an opportunity to comment on the recommendation. For these reasons, the Commission rejects the recommendation.

III. Regulatory Matters

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions, nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501, et seq., provides that an agency may not conduct or sponsor, and a person is not required to respond to, a “collection of information,” unless it displays a currently valid OMB control number. Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). This rule contains new information collection requirements at 25 CFR 558.3(e) that are subject to review by OMB under the PRA and, accordingly, have been submitted to OMB for review under the PRA, Section 3507(d). OMB previously reviewed and approved information collection relating to 25 CFR 558.3 and assigned OMB control number 3141-0003 (expires 6/30/2023).

Described below are the proposed rule's information collection activities along with estimates of their annual burdens. These activities, along with annual burden estimates, do not include activities that are usual and customary industry practices. The burden estimates comprise the time necessary for Tribes to forward to the NIGC copies of their license revocation decisions unless they already submit such to the NIGC in the usual course of their business.

The Commission requests comment on all aspects of this information collection, including:

- a. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- b. The accuracy of the estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- c. Ways to enhance the quality, utility, and clarity of the information to be collected; and
- d. How the agency might minimize the burden of the collection of information on those required to respond, including by appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

2. Summary of Proposed Information Collection Requirements and Burden Estimates

Title of Collection: Class II and Class III / Background Investigation Tribal Licenses.

OMB Control Number: 3141-0003.

Form Number: None.

Type of Review: New rule with added collection burden.

Respondents/Affected Public: Tribal gaming operations of Indian Tribes that conduct Class II and/or Class III gaming under the Indian Gaming Regulatory Act.

Respondent's Obligation: Mandatory.

Frequency of Collection: On occasion.

The new rule proposed under 25 CFR 558.3(e) will create the following estimated burdens:

Total Estimated Number of Annual Responses: 100

Estimated Completion Time per Response: 1 hour.

Total Estimated Number of Annual Burden Hours: 100 hours.

Total Estimated Annual Non-Hour Burden Cost: None.

3. Written Comments or Additional Information

Written comments and suggestions on the information collection requirements should be submitted by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Submit comments directly to OMB's Office of Information and Regulatory Affairs, Attn: Policy Analyst/Desktop Officer for the National Indian Gaming Commission. Comments also may be emailed to OIRA_Submission@omb.eop.gov, by including reference to "NIGC PRA Renewals" in the subject line.

To request additional information about this ICR, contact Tim Osumi, Privacy & Records Information Manager, NIGC Information Management Program by email at tim.osumi@nigc.gov or by telephone at (202) 264-0676.

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy, published July 15, 2013. The NIGC's consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as:

Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the key employee and primary management official regulatory definitions as well as the background and licensing regulations. Consultations were held on July 27 and 28, 2021. A proposed rule was issued on August 10, 2022, and a revised proposed rule was issued on April 14, 2023.

List of Subjects in 25 CFR Parts 502, 556, and 558

Gambling, Indian lands.

Therefore, for reasons stated in the preamble, 25 CFR parts 502, 556, and 558 are amended as follows:

PART 502—DEFINITIONS OF THIS CHAPTER

1. The authority citation for part 502 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

2. Revise § 502.14 to read as follows:

§ 502.14 Key employee.

Key employee means:

(a) Any person who performs one or more of the following functions for the gaming operation:

- (1) Bingo caller;
- (2) Counting room supervisor;
- (3) Chief of security;

(4) Floor manager;

(5) Pit boss;

(6) Dealer;

(7) Croupier;

(8) Approver of credit;

(9) Custodian of gaming systems as defined in 25 CFR 547.2 and similar class III systems, gaming cash or gaming cash equivalents, gaming supplies or gaming system records;

(10) Custodian of surveillance systems or surveillance system records.

(b) Any gaming operation employee authorized by the gaming operation for unescorted access to secured gaming areas designated as secured gaming areas by the TGRA;

(c) If not otherwise licensed as a key employee or primary management official, the four persons most highly compensated by the gaming operation;

(d) Any other employee of the gaming enterprise as documented by the tribe as a key employee.

3. Revise § 502.19 to read as follows:

§ 502.19 Primary management official.

Primary management official means:

(a) Any person having management responsibility for a management contract;

(b) Any person who has authority:

(1) To hire and fire employees of the gaming operation; or

(2) To establish policy for the gaming operation.

(c) The chief financial officer or a position with duties similar to a chief financial officer.

(d) The general manager or a position with duties similar to a general manager.

(e) Any other employed management official of the gaming enterprise as documented by the Tribe as a primary management official.

4. Add §§ 502.25 and 502.26 to read as follows:

§ 502.25 Gaming Enterprise.

Gaming Enterprise means the entities through which Tribe conducts, regulates, and secures gaming on Indian lands within such tribe's jurisdiction pursuant to the Indian Gaming Regulatory Act.

§ 502.26 Tribal Gaming Regulatory Authority (TGRA).

Tribal Gaming Regulatory Authority (TGRA) means the entity authorized by Tribal law to regulate gaming conducted pursuant to the Indian Gaming Regulatory Act.

**PART 556—BACKGROUND INVESTIGATIONS FOR PRIMARY
MANAGEMENT OFFICIALS AND KEY EMPLOYEES**

5. The authority citation for part 556 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

6. Amend § 556.4 by revising the introductory text to read as follows:

§ 556.4 Background investigations.

A Tribe shall perform a background investigation for each primary management official and for each key employee of the gaming enterprise.

7. Amend § 556.6 by revising paragraph (a) to read as follows:

§ 556.6 Report to the Commission.

(a) When a Tribe licenses a primary management official or a key employee, the Tribe shall maintain the information listed under § 556.4(a)(1) through (14).

8. Revise § 556.8 to read as follows:

§ 556.8 Compliance with this part.

All tribal gaming ordinances and ordinance amendments approved by the Chair prior to [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] do not need to be amended to comply with this part. All future ordinance submissions, however, must comply.

PART 558—GAMING LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

9. The authority citation for part 558 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

10. Revise § 558.3 to read as follows:

§ 558.3 Notification to NIGC of license decisions and retention obligations.

(a) After a tribe has provided a notice of results of the background check to the Commission, a tribe may license a primary management official or key employee.

(b) Within 30 days after the issuance of the license, a tribe shall notify the Commission of its issuance.

(c) A key employee or primary management official who does not have a license after ninety (90) days shall not be permitted to perform the duties, functions, and/or responsibilities of a key employee or primary management official until so licensed.

(d) If a tribe does not license an applicant—

(1) The tribe shall notify the Commission; and

(2) Shall forward copies of its eligibility determination and notice of results, under § 556.6(b)(2) of this chapter, to the Commission for inclusion in the Indian Gaming Individuals Record System.

(e) If a tribe revokes a key employee or primary management official's license—

(1) The tribe shall notify the Commission; and

(2) Shall forward copies of its license revocation decision for inclusion in the Indian Gaming Individuals Record System.

(f) A tribe shall retain the following for inspection by the Chair or their designee for no less than three years from the date of termination of employment:

- (1) The information listed under § 556.4(a)(1) through (14) of this chapter;
- (2) Investigative reports, as defined in § 556.6(b) of this chapter;
- (3) Eligibility determinations, as defined in § 556.5 of this chapter;
- (4) Privacy Act notice, as defined in § 556.2 of this chapter; and
- (5) False Statement notice, as defined in § 556.3 of this chapter.

11. Revise § 558.4 to read as follows:

§ 558.4 Notice of information impacting eligibility and licensee's right to a hearing.

(a) If, after the issuance of a gaming license pursuant to § 558.3, the Commission receives reliable information indicating that a key employee or a primary management official is not eligible for a license under § 556.5 of this chapter, the Commission shall notify the issuing tribe of the information.

(b) Upon receipt of such notification under paragraph (a) of this section, a tribe shall immediately suspend the license and shall provide the licensee with written notice of suspension and proposed revocation.

(c) A tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

(d) The right to a revocation hearing shall vest upon receipt of a license or at such earlier time as is determined by tribal law, regulation, and/or policy.

(e) After a revocation hearing, a tribe shall decide to revoke or to reinstate a gaming license. A tribe shall notify the Commission of its decision within 45 days of receiving notification from the Commission pursuant to paragraph (a) of this section.

12. Revise § 558.6 to read as follows:

§ 558.6 Compliance with this part.

All tribal gaming ordinances and ordinance amendments that have been approved by the Chair prior to [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and that reference this part do not need to be amended to comply with this section. All future ordinance submissions, however, must comply.

Edward Simermeyer,

Chairman.

Jean Hovland,

Vice Chair.

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